

Testimony on Raised Bill No. 5434:

1. Physicians under current law are only being asked to adhere to a level of care that their colleagues believe is appropriate. In order to bring a law suit against any doctor, including emergency room doctors, a similarly trained colleague who has been in the active practice of that field of medicine for at least the 5 years prior to the incident must certify in writing that negligence occurred.
2. This legislation is not intended to prevent frivolous claims as the American College of Emergency Room Physicians claims in an advocacy document published on their website; instead it is intended to and will prevent meritorious claims. The standard of "reckless disregard" was intentionally chosen for a reason: it would be impossible for plaintiffs to prove except in the most extreme examples such as sexual abuse of patients or operating on a patient when drunk. In essence 100% of meritorious claims based on negligence, which their own colleagues would agree was careless, would be barred. This is part of a grander scheme to start with immunity for emergency room physicians and then attempt to extend it to all doctors.
3. Promoting safe medical care; safe medical practices; and safe medical practice policies and procedures is and should be the goal of legislation designed to protect the public. A request for "immunity", which is essentially what this proposed bill seeks, is a statement by emergency room doctors that they cannot stop being negligent, so instead protect us from accountability for our bad care. Immunity provides no incentive for improved, safer care. Practicing good medicine avoids negligence claims and is what the public deserves. Dr. Sanjay Gupta, associate chief of neurosurgery at an Atlanta Hospital and CNN's chief medical correspondent said that approximately 100,000 deaths per year are due to medical errors. A November/2010 study by the Office of Inspector General for the US Dept of Health and Human Services found that 1 in 7 Medicare patients is the victim of a serious medical error, 44% of which are preventable. A 2010 Rand Institute for Civil Justice study found, as would be expected, a positive correlation between patient safety interventions and reduced malpractice claims. Patient safety interventions go to the root cause of the problem while immunity legislation masks the problem at the expense of innocent victims. Analysis of the National Practitioner's Data Bank(NPDB) has shown that the number of malpractice payments made has fallen for 7 consecutive years thru 2010; compared to the US population the number of payments was 37.5 percent lower in 2010 than in 1991. 91-98% of deaths from avoidable medical negligence go uncompensated; when adjusted for inflation by the consumer price index or medical services index the amount of payments in 2010 was the lowest since 1998. These statistics and analyses beg the question: where is the crisis? Where is the basis for this proposed legislation? And where is the link between this proposed legislation and the proposed purpose of it by its proponents? Further the question must be asked: is this "crisis" real? Or has it been created by years of propaganda by insurance companies and health care corporations in an attempt to prevent justified negligence payments so their coffers can be replenished from losses suffered, not by malpractice claims, but by economic trends such as the

downturn of the stock market; unemployment with its attendant loss of medical insurance; and poor reimbursement rates by Medicare and Medicaid. Immunity legislation should not be used to address economic market trends; unemployment with its attendant loss of medical insurance benefits; poor Medicare, Medicaid and major medical insurance reimbursement rates; or to pad the pockets of insurance companies and healthcare corporations at the expense of victims of medical negligence.

If you were to ask any victim of medical negligence or the family of those who have died from medical negligence, all of them would pray that the clock could be turned back to a time just before the negligence that injured them; that prevention of their tragedy is all that they would want; not compensation after which can never return to them what they have lost. Prevention of malpractice should be the goal; not immunizing those whose colleagues think they are negligent from accountability. Victims are entitled to justice. Without laws that provide justice to them we will turn the clocks back in history to a time when vigilante justice prevailed.

4. Where are the efforts by proponents of this bill to show that improving patient safety decreases malpractice claims and benefits the patients and themselves.
5. This legislation likely would be found unconstitutional as it would have a disparate impact on minorities and women who are believed to be a large percentage of emergency room patients; and this proposed bill denies these classes equal protection of the law. And to the extent it establishes greater protection from legal proceedings to doctors providing care in the emergency departments, it provides special privileges and immunities to this select group of healthcare providers over others.
6. The current legal process for medical negligence claims is extraordinarily burdensome and difficult. Finding well-credentialed doctors who will testify against their colleagues is a hugely difficult task. When they are found they are enormously expensive. Then the litigation itself is cost intensive with costs often exceeding \$50,000 – 100,000 and more per claim. Most law firms do not have the financial ability to pursue medical negligence claims and refer victims to the select law firms that can. These difficulties are not publicly announced by insurance companies or healthcare corporations although they are known by them; and frequently used by them by delaying litigation in an attempt to wear down the victim or their lawyers with their superior financial resources.